



INTERIOR BOARD OF INDIAN APPEALS

Estate of Dickey Dee Jones, Jr.

61 IBIA 148 (07/29/2015)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF DICKEY DEE JONES, JR.)	Order Reversing In Part Order of
)	Modification Upon Petition to Reopen
)	and Denying Motion to Intervene
)	
)	
)	Docket No. IBIA 13-108
)	
)	
)	July 29, 2015

Carol Hoogenboom (Appellant) appealed to the Board of Indian Appeals (Board) from an Order of Modification Upon Petition to Reopen and Denying Motion to Intervene (Reopening Order) entered on May 21, 2013, by Administrative Law Judge (ALJ) Richard L. Reeh in the estate of Dickey Dee Jones, Jr. (Decedent).¹ Appellant asserts that she is Decedent’s biological sibling, and should have been determined to be Decedent’s heir.² The Reopening Order denied Appellant’s motion to intervene, finding that because Appellant had been adopted by a different family during Decedent’s lifetime, she cannot inherit from Decedent under AIPRA’s adopted-out provision, 25 U.S.C. § 2206(j)(2)(B)(iii). Based on that determination, the ALJ concluded that Appellant did not have standing to intervene.³ Appellant contends that the ALJ misapplied AIPRA’s adopted-out provision.

¹ Decedent was an enrolled member of the Kiowa Indian Tribe of Oklahoma. His probate case is assigned Probate No. P000095697IP in the Department of the Interior’s probate tracking system, ProTrac.

² The Order Determining Heirs and Decree of Distribution (Decision), dated June 27, 2012, found that Decedent was not survived by any individuals who would be in the line of succession under the American Indian Probate Reform Act (AIPRA), *see* 25 U.S.C. § 2206(a)(2)(B), and thus Decedent’s estate was inherited by the Indian tribe with jurisdiction over respective allotment interests owned by Decedent.

³ In addition, the Reopening Order rejected the rationale underlying a petition filed by the Anadarko Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), but altered the Decision to clarify that Townsite Lot #8Y4-26 in Lawton, Oklahoma should be (continued...)

The Board reverses the Reopening Order in part because Appellant has alleged sufficient facts to support standing to intervene as a potential heir to Decedent's estate under the exception in AIPRA that allows Indians who have been adopted-out to inherit from natural kin with whom they have maintained a family relationship. *See* 25 U.S.C. § 2206(j)(2)(B)(iii)(I).

Background

Decedent died intestate on May 12, 2011. Order Determining Heirs and Decree of Distribution, June 27, 2012, at 1 (Decision) (AR Tab 9); Certificate of Death, June 2, 2011 (AR Tab 9). Decedent was never married, had no children, and was predeceased by his parents and only sibling of record, his sister, Mary Catherine McClure. Decision at 1; Data for Heirship Finding and Family History, May 17, 2012, at 1 (AR Tab 9). On Decedent's date of death, he owned interests in trust real property, and had a balance in his Individual Indian Money (IIM) account. Data for Heirship Finding and Family History at 2-3.

A probate hearing was held on May 17, 2012, and the following month the ALJ entered the Decision, finding that Decedent died without issue, and distributing Decedent's estate among the tribes with jurisdiction over particular interests in land owned by Decedent, including the Kiowa, Comanche, Apache, and Fort Sill Apache tribes of Oklahoma. Decision at 1-2. The Decision also approved a claim submitted by Decedent's aunt on behalf of the Gragg Monument Company for setting Decedent's headstone, to be paid from the balance of Decedent's IIM account as of his date of death. *Id.* at 2. Appellant received no notice of the hearing or Decision.

On January 16, 2013, the Superintendent filed a petition for reopening seeking modification of the Decision to distribute Decedent's fractional interest in a townsite lot located in Lawton, Oklahoma, to the co-owners of the allotment. Petition for Reopening for an Order of Modification, Jan. 16, 2013, at 1 (unnumbered) (AR Tab 7). The ALJ subsequently issued a notice and order to show cause, proposing an amendment to the Decision that would distribute the lot to the Kiowa Tribe, and allowing for the submission of timely statements by the parties prior to entry of the modification. Notice of Petition to Reopen and Order to Show Cause, Apr. 23, 2013, at 2 (AR Tab 6). In response, Appellant submitted, through counsel, a motion to intervene and request for extension of

(...continued)

distributed to the Kiowa Indian Tribe of Oklahoma. The modification is not at issue in this appeal.

time to respond to the order to show cause. Petitioner's Motion, May 13, 2013 (AR Tab 5).

Appellant provided documentation indicating that she was an enrolled member of the Kiowa Tribe, the biological sister of Decedent, and that she had been adopted out of the family and had no knowledge of the probate proceedings until April 29, 2013. Petitioner's Motion at 1-2. Appellant requested a thirty-day extension to respond to the order to show cause to determine her interest, if any, in Decedent's estate. *Id.* at 2.

On May 21, 2013, the ALJ rejected the Superintendent's reason for modification of the Decision, finding instead that for the purposes of 25 U.S.C. § 2206(a)(2), the tribe with jurisdiction over the allotment was the Kiowa Tribe. Reopening Order at 2 (AR Tab 4). He modified the Decision accordingly, and, in the same Order, denied Appellant's motion to intervene for lack of standing. *Id.* at 2-3. The ALJ concluded that Appellant was not an eligible heir to Decedent's estate, as defined by AIPRA, because she was adopted out of the family during Decedent's lifetime, and "adopted-out family members are not considered heirs-at-law." *Id.* at 2 (citing 25 U.S.C. §2206(j)(2)(B) and *Estate of Jerome Hummingbird*, 55 IBIA 246 (2012)). As a result, the ALJ found that Appellant was not an "interested party" to the proceeding because she was not a "potential or actual heir" as defined by 43 C.F.R. § 30.101. *Id.* at 3.

Appellant appealed to the Board, and argues that the ALJ erred in denying her motion to intervene for lack of standing. Notice of Appeal, June 19, 2013, at 2 (AR Tab 3). Appellant contends that the ALJ mistakenly relied on *Estate of Hummingbird* in support of his conclusion that Appellant was ineligible to inherit from Decedent, because that case involved an adopted-out child seeking to inherit from a parent, which AIPRA prohibits. *Id.* In contrast, in the instant case Appellant seeks to inherit from her deceased natural brother, which AIPRA allows under certain circumstances. *Id.* Appellant argues that she should benefit from the provision under AIPRA that expressly allows an adopted person to inherit "the estate of natural kin, other than the natural parent, who has maintained a family relationship with the adopted person." *Id.* (quoting 25 U.S.C. § 2206(j)(2)(B)(iii)(I)). Appellant also states she "is prepared to offer evidence that she established and maintained a family relationship with the decedent." *Id.*

On September 6, 2013, the Board granted counsel's motion to withdraw, and on September 27, 2013, the Board granted Appellant's request for an extension of time to file an opening brief. Appellant then submitted an opening brief and affidavit documenting her relationship with Decedent, and reiterating her arguments in the notice of appeal. *See* Opening Brief (Br.), Oct. 25, 2013. No responsive pleadings have been received by the Board.

Discussion

I. Standard of Review

On appeal to the Board, the Board reviews legal determinations and the sufficiency of the evidence *de novo*. *Estate of Sarah Stewart Sings Good*, 57 IBIA 65, 72 (2013).

II. The Exception in § 2206(j)(2)(B)(iii)(I) Applies to Appellant

AIPRA governs the descent and distribution of trust property when an Indian decedent dies intestate. *See generally* 25 U.S.C. § 2206. When an individual Indian is adopted out of the family, the general rule is that the adopted individual “shall not be considered the child or issue of his natural parents.” *Id.* §2206(j)(2)(B)(iii)(I). In such a case, any legally cognizable parent-child relationship between the adopted-out individual and his natural parents is severed, and the adopted-out person is precluded from inheriting the estate of his natural parents. *Estate of Wilfred R. Greywind*, 61 IBIA 12, 15 (2015) (quoting *Estate of Clayton Donald Mountain Pocket*, 54 IBIA 236, 237 (2012)).

This severance of familial ties also extends to the adopted person’s biological siblings, who are precluded from inheriting the estate of the adopted-out sibling. *Id.* As the Board held in *Estate of Mountain Pocket*, Congress meant for the word “sibling” in AIPRA to have its ordinary meaning: one of two or more individuals having one common parent. 54 IBIA at 242. When a child is adopted out of the family, and the parent-child relationship is legally severed, the adopted person no longer shares a common parent with his biological siblings under the law. *Id.* The Board has thus held that the “plain, unambiguous language in the statute prohibits people from inheriting trust property from their adopted-out siblings because they are no longer considered siblings for purposes of [AIPRA].” *Estate of William Keith Garson*, 57 IBIA 296, 303 (2013).

However, the reverse is not true. An exception allows adopted persons to inherit from members of their biological family under certain circumstances. Section 2206(j)(2)(B)(iii)(I) states that an adopted person shall not be considered issue of his natural parents, “except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person.” 25 U.S.C. § 2206(j)(2)(B)(iii)(I). In the case of siblings, we have held that this “unambiguous” exception may permit an adopted person to inherit from his biological sibling. *Estate of Garson*, 57 IBIA at 304.

The ALJ erred by denying Appellant’s motion to intervene based on the overbroad conclusion that “adopted-out family members are not considered heirs-at-law.” Reopening Order at 2. The Board also agrees with Appellant that the ALJ’s reliance on *Estate of*

Hummingbird was mistaken, as the adopted person in that case sought to inherit her natural parent's estate, which is explicitly prohibited by the statute. We find that Appellant has alleged sufficient facts, and provided sufficient documentation, to establish standing as a potential heir to Decedent's estate under the adopted-out exception in AIPRA. Appellant should have been given the opportunity to participate in the probate proceedings on reopening.

We note, however, that our decision does not reach the merits of Appellant's claim. On remand, Appellant must prove that she is, in fact, Decedent's biological sibling, and that she and Decedent maintained a meaningful family relationship as contemplated by the statute. Our decision today is limited to finding that Appellant is not precluded from inheriting from Decedent by the sole fact that she was adopted out of the family. AIPRA clearly provides for such a one-way distribution between biological siblings in its exception to the general rule applied to adopted persons.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board reverses that part the Reopening Order here appealed and remands for further proceedings consistent with this decision.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge